# STATE OF MICHIGAN

# COURT OF APPEALS

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In re Estate of LEONARD JOSEPH SNOW,
Deceased.

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DAVID RICHMOND,

Petitioner-Appellee,

v

RICHARD A. SNOW,

Respondent-Appellant.

UNPUBLISHED
February 11, 2003

No. 234707
Manistee Probate Court
LC No. 00-000082-DE

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Before: Sawyer, P.J., and Jansen and Donofrio, JJ.

PER CURIAM.

Respondent appeals as of right a probate court order admitting a will to probate, appointing petitioner as personal representative, and construing the will to pass all of the testator's property, both real and personal, to petitioner. We affirm.

On December 26, 1990, the testator executed both a Michigan statutory will and a handwritten statement. The handwritten statement provided, in full:

> I Leonard Joseph Snow leave all my personal & household belongings along with my home and my car to David Richmond of 8635 Milarch Road, Onekama.

The testator died on July 17, 2000. The trial court ruled that all of the testator's property, both real and personal, passed to petitioner under the terms of the statutory will and the handwritten statement. According to the trial court, the handwritten statement was either a valid will itself or an "additional clause" under Article 3.4 of the statutory will, and the word "home" included the testator's dwelling and the real property on which the dwelling was located, in addition to adjacent lots owned by the testator at the time of his death.

Respondent first contends that the trial court erred in holding that all the testator's property, including both real and personal property, passed to petitioner when the testator's handwritten statement was ineffective to gift real property under Article 2.2 of the statutory will and MCL 700.2513 and when the handwritten statement was not an additional clause under Article 3.4 of the statutory will or a separate will itself. We disagree.

Article 2.2 of the statutory will provides, in pertinent part,

> I may leave a separate list or statement either in my handwriting or signed by me at the end, regarding gifts of specific books, jewelry, clothing, automobiles, furniture, and other personal and household items.

According to respondent, the testator attached the handwritten statement after page five of the statutory will because he intended the handwritten statement to be a list or statement as contemplated in Article 2.2. Respondent further contends that the printed instructions in Article 2.2 only permit personal and household items to be disposed of by such a list and that MCL 700.2513 only permits "tangible personal property" to be disposed of through a written list separate from the will. In sum, according to respondent, the handwritten statement was an invalid attempt to dispose of real property.

Even if respondent is correct that the testator's gift of his "home" to petitioner by the handwritten statement was not proper under Article 2.2, the handwritten statement made a valid gift of the testator's "home" to petitioner under Article 3.4 of the statutory will. Article 3.4 provides that "additional clauses found at the end of this form are part of this will." It is unclear from the record if the testator placed the handwritten statement after page five, as respondent contends, or at the end of the will, as petitioner contends.

In any event, we conclude that even if the handwritten statement was not located at the end of the document as instructed in Article 3.4, the testator's lack of strict compliance with the language of Article 3.4 did not render the testator's gift of his "home" to petitioner invalid. It is our duty in reviewing the testator's will to carry out the testator's intent as nearly as possible. *In re Maloney Trust*, 423 Mich 632, 639; 377 NW2d 791 (1985). In this case, it is clear from the testator's language in the handwritten statement that he intended to gift his "home" to petitioner upon his death, regardless of the location of the handwritten statement. We decline to adopt a highly technical and rigid construction of the language in Article 3.4 of the statutory will when such a construction would defeat the testator's clear intent to gift his "home" to petitioner upon his death.

Moreover, the trial court did not err in holding that the handwritten statement was a valid will in and of itself. The handwritten statement was in writing and was signed by the testator and three witnesses. MCL 700.2502(1). The fact that the testator executed both the handwritten statement and the statutory will contemporaneously is significant in revealing his intent that the handwritten statement was meant to supplement the statutory will. If the testator had intended for either the statutory will or the handwritten statement alone to act as his will, he would not have executed the other document. In the statutory will, the testator made a cash gift to petitioner and appointed petitioner as personal representative. The handwritten statement disposed of the balance of his estate. Therefore, to the extent that the handwritten statement was not inconsistent with the statutory will and did not make a complete disposition of the testator's estate, the handwritten statement was a supplement to the statutory will. MCL 700.2507(4).

Respondent next argues, in the alternative, that if the testator's handwritten statement was effective to gift the testator's "home" to petitioner, then the testator's gift of his "home" should

have been limited to the testator's dwelling and only the three[1] lots upon which it was located. In other words, respondent contends that the "home" should not have included the additional adjacent nine real property lots owned by the testator at the time of his death.

If a will is not ambiguous, the testator's intent must be gleaned from the four corners of the will. *In re Maloney Trust, supra,* 423 Mich 639. However, if a will evidences a patent or latent ambiguity, a court may establish the testator's intent by considering two outside sources: (1) surrounding circumstances and (2) rules of construction. *Id.* A latent ambiguity is one where "'the language employed is clear and intelligible and suggests but a single meaning, but some extrinsic fact or extraneous evidence creates'" the possibility of more than one meaning. *In re Butterfield Estate,* 405 Mich 702, 711 n 6; 275 NW2d 262 (1979), quoting Black's Law Dictionary (4th ed). A latent ambiguity may be proved by facts extrinsic to the testamentary instrument. *In re McPeak Estate,* 210 Mich App 410, 412; 534 NW2d 140 (1995).

We read the handwritten statement to contain a latent ambiguity because of the testator's use of the word "home." Because the testator owned numerous lots of real property adjacent to the lots where his physical dwelling was located, the language of the handwritten will itself is ambiguous regarding if the testator intended for his use of the word "home" to include all of the real property or only those lots containing the dwelling. It is proper for this Court to consider both the surrounding circumstances and the rules of construction to determine the testator's intent because the word "home" creates a latent ambiguity in the will. *In re Maloney Trust, supra,* 423 Mich 639.

We have considered the rules of statutory construction. Michigan has a "less formal approach to interpreting wills[.]" *In re Bem Estate,* 247 Mich App 427, 437; 637 NW2d 506 (2001). Our Supreme Court has recognized that the term "home" is "[a] relative term, whose meaning must often necessarily depend on the intent as determined by the context[.]" *In re Scheyer's Estate,* 336 Mich 645, 650; 59 NW2d 33 (1953), quoting 40 CJS, p 418.

We also believe the testator's statement to Brenda Vallie at the time he executed the statutory will and the handwritten statement is important as a surrounding circumstance. Vallie testified that she helped the testator to prepare the statutory will and that she wrote the handwritten statement. According to Vallie, the testator "specifically stated to me that he wanted David Richmond to receive anything that he had." Vallie's testimony clearly reveals the testator's intent to include all of his real property when gifting his "home" to petitioner including the adjacent real property. Also, in his 1995 application for a homestead property tax credit, the testator used figures indicating that he used the sum of the value of all of the lots. For these reasons we find that the trial court did not err in concluding that the word "home" included all of

[1] Respondent suggests in his brief on appeal that the dwelling was actually located on two of the testator's lots. In light of our holding that the trial court properly construed the testator's will as passing all of the testator's property, both real and personal to petitioner, we need not determine what specific lots contained the testator's dwelling.

the testator's real property.

Affirmed.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Pat M. Donofrio